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Hon. Whitman L. Holt

THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In re:

ICAP ENTERPRISES, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Lead Case No: 23-01243-WLH11

Jointly Administered

**OBJECTION TO THE MOTION FOR  
ORDER (I) AUTHORIZING THE  
DEBTORS TO OBTAIN  
SUPPLEMENTAL POST PETITION  
SECURED FINANCING; (II)  
GRANTING SUPER PRIORITY  
ADMINISTRATIVE EXPENSE  
CLAIMS; AND (III) GRANTING  
RELATED RELIEF**

Jim Christensen hereby objects to the Joint Motion of the Debtors and  
Committee for Order (I) Authorizing the Debtors to Obtain Supplemental Post-

<sup>1</sup> The Debtors (along with their case numbers) are iCap Enterprises, Inc. (23-01243-11); iCap Pacific NW Management, LLC (23-01261-11); iCap Vault Management, LLC (23-01258-11); iCap Vault, LLC (23-01256-11); iCap Vault 1, LLC (23-01257-11); Vault Holding 1, LLC (23-01265-11); iCap Investments, LLC (23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (23-01248-11); iCap Equity, LLC (23-01247-11); iCap Pacific Income 4 Fund, LLC (23-01251-11); iCap Pacific Income 5 Fund, LLC (23-01249-11); iCap Northwest Opportunity Fund, LLC (23-01253-11); 725 Broadway, LLC (23-01245-11); Senza Kenmore, LLC (23-01254-11); iCap Campbell Way, LLC (23-01250-11); UW 17th Ave, LLC (23-01267-11); iCap Broadway, LLC (23-01252-11); VH 1121 14th LLC (23-01264-11); VH Senior Care LLC (23-01266-11); VH Willows Townhomes LLC (23-01262-11); iCap @ UW, LLC (23-01244-11); VH 2nd Street Office, LLC (23-01259-11); VH Pioneer Village LLC (23-01263-11); iCap Funding LLC (23-01246-11); iCap Management LLC (23-01268-11); iCap Realty, LLC (23-01260-11); Vault Holding, LLC (23-01270-11); iCap Pacific Development LLC (23-01271-11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11).

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1 Petition Secured Financing; (II) Granting Super Priority Administrative Expense  
2 Claims; and (III) Granting Related Relief [ECF No. 467] (the “Motion”).

3 Mr. Christensen joins in the United States Trustee’s Objection to the Motion  
4 [ECF No. 583] and other parties’ objections. It is not appropriate for the Debtors  
5 and the Committee to request a Ponzi scheme finding 1) that is entirely separate  
6 from a particular cause of action and 2) that is a condition precedent to receiving  
7 post-petition financing. Such a finding will require significant fact-finding, and will  
8 not answer the question of any party’s liability.

9 First, by requesting a Ponzi scheme finding at this early stage, Debtors and  
10 the Committee are essentially asking the Court to agree that Debtors will succeed  
11 on the claims they intend to bring, whatever those may be. This is inappropriate:  
12 parties may not seek such assurances from the Court. The request also attempts to  
13 separate the Ponzi scheme issue from the causes of action that Debtors may bring,  
14 which is illogical. Although parties are still unclear what actions Debtors may  
15 bring, such actions will naturally be actions to recover money or property, which  
16 must be adversary proceedings. *See* Fed. R. Bankr. P. 7001. Debtors and the  
17 Committee may argue that a Ponzi scheme finding, standing alone, is entirely  
18 separate from any findings required in future actions to recover money or property.  
19 Common sense suggests otherwise. A Ponzi scheme finding at this stage will  
20 necessarily assist with making determinations of liability in any subsequent action  
21 (such as a fraudulent transfer action), which is precisely why the finding is  
22 requested. In other words, if some Ponzi scheme finding is made now, Debtors will  
23 effectively benefit from a presumption that fraudulent transfers occurred and will  
24 be able to bypass the requirement to establish requisite facts. This would obviously  
25 stack the deck in Debtors’ favor and prejudice any prospective defendant  
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1 attempting to defend itself. The requested Ponzi scheme finding should be a  
2 determination left for any adversary proceedings Debtors plan to bring.

3         Second, a post-petition financing agreement may not contain terms that  
4 forces a court to make a make a finding of fact or conclusion of law without  
5 requisite procedure. As Debtors and the Committee state in their Motion, “cases  
6 consistently reflect that the court’s discretion under section 364 is to be utilized on  
7 grounds that permit reasonable business judgment to be exercised *so long as the*  
8 *financing agreement does not contain terms that leverage the bankruptcy process*  
9 *and powers* or its purpose is not so much to benefit the estate as it is to benefit  
10 parties in interest.” Motion at 22 (quoting *In re Ames Dep’t Stores, Inc.*,  
11 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (emphasis added)). *See also Ames*,  
12 115 B.R. at 37 (noting that in applying their discretion under section 364(b), “courts  
13 have focused their attention on proposed terms that would tilt the conduct of the  
14 bankruptcy case; prejudice, at an early stage, the powers and rights that the  
15 Bankruptcy Code confers for the benefit of all creditors; or *leverage the Chapter*  
16 *11 process by preventing motions by parties-in-interest from being decided on their*  
17 *merits.*”) (emphasis added). Incorporating a Ponzi scheme finding in a post-petition  
18 financing order would unquestionably leverage the Chapter 11 process by  
19 preventing future parties-in-interest from having their cases decided on the merits.  
20 The Court should not summarily conclude that a Ponzi scheme occurred on a  
21 motion to approve post-petition financing.

22         Finally, the findings that Debtors and the Committee seek are advisory and  
23 have no practical effect. By way of example, Mr. Christensen (like all other  
24 possible defendants) has no notice that he may be a party in some future adversary  
25 action, and thus has no need to be involved in these early proceedings. Further  
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1 proceedings would necessarily be required, with the requisite due process  
2 procedures. To the extent that the Court is willing to entertain an early fact-finding  
3 procedure absent adversary proceedings, any findings about the company would be  
4 at best advisory for the company's net-positive investors.

5 Accordingly, Mr. Christensen respectfully requests that the Motion be  
6 denied.

7  
8 DATED this 18th day of March, 2024.

9 HILLIS CLARK MARTIN & PETERSON P.S.

10 By: s/ Brian C. Free

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19 *Attorneys for Jim Christensen*

**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 18th day of March, 2024, I caused to be served a copy of the foregoing document upon all registered counsel and parties of record via CM/ECF.

s/ Brian C. Free

Brian C. Free, WSBA #35788

ND: 24655.002 4865-5427-4734v3

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